IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No. 2705 of l990

l. Ras Resorts and Apart Hotels
a public limited
company incorporated under
the Companies Act, l956
having its office at 99/C
Tulsi Wadi, Tardeo Bombay. 34

2. Vishamber Shewakramani of
Bombay Indian Inhabitant,
Shareholder and Managing Director
of M/s Ras Resorts and Apart
Hotels Limited, having his office
at 99/C Tulsiwadi Tardeo,
Bombay.400034 ...petitioners

vs

l. Union of India,through
the Ministry of Tourism

2. The Administrator of Dadra and
Nagar Haveli Raj Bhavan
Panjim Goa

3. Collector of Dadra and Nagar
Haveli Silvasa 396 230

4. Deputy Conservator of Forests
and Tourism in Charge
Administrator of Dadra and
Nagar Haveli Silvassa. .....respondents

Ms Nilima Dutta with Mr.Anand Grover for petitioners

Mr. Suresh Kumar for respondents.

CORAM;A.P.SHAH & S.C DHARMADHIKARI JJ.

Dated 4.ll.2004

P C:

l. Heard advocates.

2. The petitioner no.l is a public limited company incorporated under the Companies Act, l956 and the petitioner no. 2 is the shareholder and Managing Director of the petitioner no.l. The petitioner company had been leased a piece of land by the respondents at Silvassa in Union Territory of Dadra and Nagar Haveli for constructing a 3-Star hotel. It is the case of the petitioners that no hotels existed in the Union Territory of Dadra and Nagar Haveli to cater to the needs of the tourists at that time. The petitioners as well as general public invested large sums of money in the said project on the clear representation made by the respondents that 5% interest subsidy would be available from the local Administration. After the petitioners and the general public had invested large sums of moneys, the respondents illegally refused to grant and disburse the said 5% interest subsidy. Therefore by this petition the petitioners are seeking direction to the respondents to pay 5% interest subsidy to the financial institutions and banks on the basis of the bills raised by them in the past and to be raised in future in respect of loans taken by them for the development of their hotel at Silvassa.

3. The Dadra and Nagar Haveli is a Union Territory situated on the Western Coast of India and is considered to be one of the industrially backward area. The petitioners were allotted a site near Damanganga for construction of a 3-Star Hotel in l984.The Administration of Dadra and Nagar Haveli in or about January l985 made an annual plan for the year l985-86, part of the 7th Five Year Plan, providing incentive to hotel industries to develop basic infrastructure for the promotion of tourism. It was proposed to subsidize the interest on loan by 5% besides the 25% subsidy on fixed assets as the Union Territory had been declared as a 'No Industry District". There is no dispute that 25% subsidy was received by the petitioners. The controversy in the present petition relates to 5% interest subsidy. The petitioners are heavily relying upon a letter addressed by the 3rd respondent dated 29.8.l985 inter alia stating that "....it is proposed to subsidized interest on loans by 5% besides 25% subsidy on fixed assets as the Union Territory had been declared as a "No Industry District" under 7th Five Year Plan....". It is also the case of the petitioners that they were given categorical assurance by the the respondent no.2 vide his letter dated 29.8.l995 that subsidy

will be available on interest on loans and fixed assets. Further reliance is placed on the letter addressed by the Administrator Dadra and Nagar Haveli to the Dy Secretary, Government of India stating that it was proposed in the 7th Five Year Plan to provide financial assistance to hoteliers by subsidizing interest on loans by 5% taken by the entrepreneurs for hotel construction in the 7th Five Year Plan from l987. The petitioners are also relying upon the instructions from the Union of India that no objection or clearance was not required from the Union of India and concerned State Financial Corporation had to send the bill for interest subsidy to the Administration of Union Territory of Dadra and Nagar Haveli which is to be paid by the latter.The petitioners contend that they have altered their position to their prejudice inasmuch as they have invested large sums of money, invited the public to invest on the express representation that they would receive the 5% interest subsidy.

4. The respondents have resisted the petition by filing counter affidavit of Mr. K K Wahal of respondent no. 4. contending inter alia that no scheme of payment of 5% subsidy has so far been

formulated by the Governor or the Administrator. When the petitioners were given piece of land for construction of hotel vide letter dated l2.6.l984 issued by the third respondent there was no promise or assurance or representation of payment of 5% subsidy. In fact the proposal for interest subsidy was mooted only in 7th 5 Year Plan pertaining to the period l985-90 and the proposal for grant of 5% interest subsidy was included for the purpose of consideration of the same as a part of the overall comprehensive plan of development of tourism in the Union Territory. This plan was to be included in the subsequent annual plan subject to the approval and sanction of the Planning Commission and Government of India. However, the Administrator was not able to get sanction from the Planning Commissioner.Consequently no specific scheme was formulated to grant such interest subsidy and criteria for payment of 5% interest subsidy also could not be framed. For want of sanction from the Planning Commission the said proposal was not finalized for the enforcement of the scheme for interest subsidy. It was contended that a mere proposal in the plan which was yet to be finalized cannot be construed as a representation to the petitioners. A contention is also raised that in

any event the respondent no. 3 had no authority to make representation in the letter addressed to the petitioners .

5. The short question is whether in the facts and circumstances of the case the respondents are bound by the principles of promissory estoppel. The principles of promissory estoppel have been explained by a two Judge Bench in M/s Motilal Padampat Sugar Mills Co Ltd vs The State of Uttar Pradesh and ors, AIR l979 C 62l wherein it was observed as under:

> "In India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the government and the defence based on executive necessity has been categorically

negatived. Where the government makes a promise knowing or intending that it would be acted on the promisee and, in fact, the promisee acting in reliance on it alters his position the government would be held bound by the promise and the promise would be enforceable against the government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contact as required by Act 299 of the Constitution. It is elementary that in a republic governed by the rule of law no one howsoever high or low is above the law. Every one is subject to the law as fully and completely as any other and the government is no exception. It is indeed the pride of constitution democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is

concerned the former is equally bound as latter. The Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position there is no reason why the Government should not be compelled to make good such promise like any other private individual. But since the doctrine of promissory estoppel in an equitable doctrine it must yield when the equity so requires. If it

can be shown by the Government that regard to facts as they have subsequently transpired it would inequitable to hold the Government to the promise made by it the Court would not raise as equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because on the facts equity would not require that the Government should be held bound by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were

required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it.The Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency nor can the Government claim to be the sole judge of the liability and repudiate it on an exparte appraisement of the circumstance.If the Government wants to resist the liability, it will have to disclose to the court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the court to decide whether those events are such as to render it

inequitable to enforce the liability against the Government .Mere claim to change of policy would not be sufficient to exonerate the Government from the liability, the Government would have to show what precisely is the changed policy and also its reasons and justification so that the court can judge for itself which way the public interest lies and what the equity of the case demands.It is only if the court is satisfied on proper and adequate material played by the Government that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that he court would refuse to enforce the promise against the Government.The court would not act on the mere ipse dixit of the Government; for it is the court which has to decide and not th Government whether the Government should be held exempt from

liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise on giving reasonable notice, which need not be a formal notice,giving the promisee a reasonable opportunity of resuming his position provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable.Where the Government owes a duty to the

> public to act in a particular manner-and here obviously duty means a course of conduct enjoined by law-the doctrine of promissory estoppel cannot be invoked for preventing the Government .form acting in discharge of its duty under the law. The doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability imposed by law. It may also be noted that promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law."

6. The issue of promissory estoppel thus will have to be considered in the light of the above principles laid down by the Supreme Court. What is required to be established in order to succeed on the promissory estoppel is that there was definite representation by the respondent to the petitioner and that the petitioner in fact altered his position acting upon the such representation and he has suffered prejudice sufficient to constitute estoppel. In the instant case the petitioners

decided to set up a hotel in Silvassa in Dadra and Nagar Haveli in the year l984. The plot was allotted to the petitioners in l984. At that time there was no scheme which was promulgated and did not have any provision for interest subsidy. In fact there is no nexus between the petitioners decision to set up the hotel at Silvassa and the interest subsidy which was included in the 7th 5 Year plan. The 7th 5 Year Plan was published in l985 wherein it was proposed that interest subsidy would be provided. This was only draft plan and all along there was only proposal for interest subsidy . At no stage the scheme for interest subsidy was finalized. It appears that the Administration failed to get sanction from the Planning Commission for the proposal of 5 Year Plan for interest subsidy. Consequently the Administration was not able to implement the scheme for interest subsidy. In the above facts it is difficult to hold that there was definite representation by the respondents for interest subsidy and petitioners cannot be said to have altered their position on the basis of the proposal. At the time of allotment of land to the petitioners there was proposal of only 25% subsidy and the proposal for interest subsidy came much

later. Therefore we are of the opinion that the principle of promissory estoppel is not attracted in the facts and circumstances of the case. Petition is accordingly dismissed.